UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

Ronald P. Barron,

Debtor.

CASE NO. 04-90778

CHAPTER 13

JUDGE MASSEY

ORDER DENYING OBJECTION TO CLAIM

The Court confirmed Debtor's plan in an Order entered in this case in April 2004. The plan provided that a secured claim (other than one secured by Debtor's principal residence) would be paid pro rata with other such claims and at the rate in the loan documents, if the proof of claim showed the interest rate.

Wells Fargo Financial Georgia, Inc. filed a proof of claim in the amount of $2,512.54, secured by two automobiles with an interest rate of 24.99%. Debtor has now objected to Wells Fargo's claim but not on the ground that the amount of the claim is incorrect or that the loan documents do not provide for interest asserted or on any other ground having to do with the validity or enforceability of the claim. Instead, Debtor asserts that he can no longer make plan payments in an amount sufficient to perform his plan and hence now objects to the interest rate payable on the debt to Wells Fargo, which he wants reduced to 7%. He contends that if the rate is not reduced, his case will be dismissed, forcing him to refile. In a refiled case, he thinks the interest rate could be reduced below 7%. As we will see, Debtor's objection to the claim is totally without merit.

If Wells Fargo consented to Debtor's proposal to reduce the interest rate, the Court would, of course, have no problem with a plan amendment to that effect; Wells Fargo might find it cheaper to consent to it.

The problem with Debtor's objection to the claim is that it is illegal and beyond the power of the Court. The fact that Wells Fargo did not respond to the objection to its claim is totally irrelevant.

The objection is contrary to the Bankruptcy Code in two respects. First, it fails to meet the requirement of an objection to a claim imposed by section 502(b), which begins:

> (b) Except as provided in subsections (e)(2), (f), (g), (h), and (i), if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim as of the date of filing of the petition, and shall allow such claim in lawful currency of the United States in such amount, except to the extent that —

and is followed by 9 subparagraphs, each of which describes a ground on which an objection to a claim may be made. None of the exceptions in the subsections (e)(2), (f), (g), (h), and (i) applies here, and the basis for Debtor's objection to Wells Fargo's claim is not one described in the subparagraphs following the language quoted above. Note that the command to the Court in the absence of an exception or statutory ground for objection: "the court . . . *shall determine* . . . and *shall allow* such claim . . . ." (Emphasis added.)

The document filed by Debtor is not really an objection to a claim. It is a plan modification, pure and simple. The second problem with his objection, considered as an attempt to modify the confirmed plan, is that a Chapter 13 plan may be modified but only to a limited degree as set forth in section 1329(a). Modifying a confirmed Chapter 13 plan by changing the interest rate on a secured claim is not one of the types of changes that section 1329(a) permits. And Debtor did not follow the procedure for modifying a plan.

Finally, Debtor's assertion that unless his objection to Wells Fargo's claim is granted, he will be forced to dismiss and start over is not necessarily true. Although Section 1329(a) limits what a modification may provide and does not permit changing an interest rate, it does permit a change in the amount of payments to a class of claims.

A modification must also pass muster under section 1325(a). Under Section 1325(a)(5)(B) a plan must provide, unless the holder of a secured claim accepts the plan, that the holder will retain the lien securing the claim and that the "value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim." The allowed amount of Wells Fargo's claim is $2,512.54. Hence, the plan had to provide that the present value of the stream of payments to be made to Wells Fargo would be at least $2,512.54. By specifying, albeit indirectly, an interest rate of 24.99%, the plan as confirmed provided for a payout at least equal to, and arguably considerably more than, $2,512.54.

Debtor promised in the confirmed plan that he would pay the claim through monthly payments so as to pay the value of the collateral. It might be possible to pay the value of the collateral at a lower discount (interest) rate and still meet the requirements of the plan and section 1325(a)(5).

If 7% were an appropriate discount rate (the interest rate used to calculate the present value of a stream of future payments), the $2,512.54 could be paid under the plan as modified. In addition to that claim, however, Debtor has also agreed in the confirmed plan to pay interest at the rate of 24.99%. Once the principal of the claim is paid in full with interest to insure its present value, the remaining unpaid interest (as computed under the original plan less interest actually

paid) would still be secured by the lien on the collateral. Arguably, paragraph 9 of the confirmed plan does not require that extra interest to be paid during the term of the plan. Unless Debtor could work out a repayment plan thereafter, Wells Fargo could exercise its rights under the loan documents as soon as this case is closed. But it might be just as happy if Debtor continued to pay the balance of the debt directly to Wells Fargo after the plan were fully performed, even though it would take a few more months beyond the 60 month term of the plan to pay it. If not, Debtor may have to dismiss and refile to retain possession of the collateral.

Of course, Wells Fargo could object to any modification, and nothing in this Order should be construed as approving a modification that has not even been filed. If, however, such a modification were approved and Debtor performs the plan as modified, he would be entitled to a discharge, though depending on what the modification says or does not say, assuming at least that he would qualify under section 1328(b).

For these reasons, it is

ORDERED that Debtor's objection to the claim of Wells Fargo Financial Georgia, Inc. is DENIED.

Dated: May 10, 2005.

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE

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